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International Covenant on Civil and Political Rights

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Human Rights Committee
124th session

Summary record of the 3561st meeting
Held at the Palais Wilson, Geneva, on Tuesday, 30 October 2018, at 10 a.m.

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Mr. Fathalla (Vice-Chair) took the Chair.

The meeting was called to order at 10.05 a.m.

Organizational and other matters, including the adoption of the report of the Working Group on Communications (*continued*)

Draft general comment No. 36 on article 6 of the Covenant (Right to life) (*continued*)

1. **The Chair** invited the Rapporteur to present the final version of the text of general comment No. 36 on the right to life, which had been distributed to members without a symbol.

2. **Mr. Shany** (Rapporteur for the general comment) said that the final text contained all the paragraphs approved by the Committee. The order of paragraphs 38 and 39 had been reversed and, at Mr. de Frouville's suggestion, he had added references in the footnotes to three recent cases that formed part of the Committee's jurisprudence, namely *Toussaint v. Canada*, *Ambaryan v. Kyrgyzstan* and *Khadzhiyev v. Turkmenistan*.

3. It had been a long journey from the decision in March 2015 to draft a new general comment on the right to life to the finalization of the text following its second reading at the current session. Perhaps one of the lessons to be learned and applied to the formulation of the next general comment was that an effort should be made to complete the text within a two-year timespan so that the same members would be involved in the deliberations from start to finish. That being said, it had in fact been helpful to have the benefit of the fresh perspectives of new members, along with those provided by all the stakeholders that had provided such valuable comments. The final document constituted the very impressive fruit of a collective effort. He therefore trusted that it would prove to be a valuable normative statement for future generations.

4. A special debt of gratitude was owed to the initial co-rapporteur, the late Sir Nigel Rodley. The general comment had been his brainchild, and it was to be hoped that it captured his unwavering commitment to the cause of human rights, his profound humanitarian sensibility, his commitment to legal discipline and his realism. It addressed at length many of the issues which had been dear to his heart: the right to life as a supreme right emanating from human dignity, the need to progress towards the abolition of the death penalty and the importance of accountability and of the protection of the lives of prisoners and human rights defenders.

5. The general comment would make a substantial contribution to international human rights law. It rested on the Committee's understanding that human rights were indivisible, interdependent, interrelated, universal and inalienable. It conveyed the message that the protection of the right to life must not be narrowly construed, and it provided a firm basis for the application of article 6 of the Covenant both within and outside the territory of a State party, as was fitting in an era of globalization. It framed the right to a life with dignity within both negative and positive human rights obligations and focused not only on rights, but also on the institutional requirements for the provision of protection against violations. The general comment gave voice to the Committee's conviction about the fundamental importance of the right to life and the duty of all States to respect and safeguard it.

6. **The Chair** said that he took it that the Committee wished to adopt the general comment by consensus.

7. *It was so decided.*

8. **The Chair** gave the floor to members who wished to make a statement concerning the general comment.

9. **Ms. Pazartzis** said that she wished to commend the Rapporteur on his outstanding work and to pay tribute to Sir Nigel Rodley, who had been the driving force behind the drafting of the general comment. The value of the general comment lay in the fact that it codified the Committee's existing jurisprudence and practice pertaining to article 6 of the Covenant. The Committee's work regarding many aspects of the right to life had evolved and become more fully developed since the adoption of general comments Nos. 6 and 14 in 1982 and 1985, respectively, and the new general comment captured those developments. In view of the fundamental nature of the philosophical aspects involved in the right to life, the

Committee members had striven to arrive at a text embodying a careful balance of codification and progressive development which provided for the possibility that the interpretation of article 6 might yet evolve further in the future.

10. **Mr. Heyns** said that it had been a great joy to be part of a process which had reconfirmed his faith in the United Nations system. The document's legitimacy stemmed from its quality and coherence in the way that it addressed the fundamental nature of the right to life. It had countered the idea that international law was retentionist by offering a number of arguments that could be cited in advocating the progressive abolition of the death penalty. Its emphasis on extraterritorial application and procedural elements would be highly influential, and the document would serve as a lodestar for the overall approach to the right to life for many years to come.

11. **Mr. de Frouville** said that he was sure that Sir Nigel Rodley would have been proud of the outcome of the Committee's work on the general comment. He wished to commend the Rapporteur on his open-mindedness and skilful conduct of a debate that had taken place against the background of a climate in which fear generated by a lack of security was increasingly taking precedence over a concern for human rights. The Committee had risen to the challenge of dealing with the death penalty, the voluntary termination of pregnancy and weapons of mass destruction, in particular nuclear weapons. General comment No. 36 also successfully covered topical questions such as extraterritorial accountability and measures to reduce threats to the right to life posed by such conditions as violence and epidemics and a lack of access to water, adequate nutrition or essential medicines. In the current atmosphere of spreading gloom, the link forged between articles 6 and 20 of the Covenant and the obligation placed on States to ban war propaganda and hate speech were of stellar importance.

12. **Ms. Kran** said that the general comment codified the Committee's jurisprudence and provided a basis on which States parties could consolidate respect for the right to life. She hoped that it would be widely publicized by the Committee members, the secretariat, academics and civil society so that it might fulfil its purpose and have a tangible impact in terms of the protection of the right to life.

13. **Mr. Politi** said that the adoption of the general comment was an outstanding achievement. Its purpose was not only to restate the jurisprudence of the Committee but was also to provide a key instrument for interpreting the relevant provisions of the Covenant and to advance the continuing development of human rights law. He wished to highlight the provisions in the general comment that supported the abolition of the death penalty and the way in which the general comment connected the right to life to international environmental law, international humanitarian law and specifically the abolition of weapons of mass destruction. It was an extraordinary and fitting circumstance that the adoption of the general comment coincided with the celebration of the seventieth anniversary of the Universal Declaration of Human Rights.

14. **The Chair**, speaking in his capacity as a member of the Committee, said that he concurred with the sentiment expressed by Mr. Politi; the adoption of the general comment was indeed an outstanding achievement, made possible by the combined efforts of all members of the Committee, past and present. While it had taken a great deal of time to adopt general comment No. 36, the length of the Committee's deliberations had been wholly appropriate given the importance of its subject matter. He wished to commend the co-Rapporteurs, without whose leadership the level of compromise inherent in the general comment would not have been possible. A notable area of compromise for him, as a member, had been the issue of the voluntary termination of pregnancy, which was addressed in the paragraph on the termination of pregnancy, particularly the formulation: "States parties should not introduce new barriers and should remove existing barriers that deny effective access by women and girls to safe and legal abortion." In his opinion, that implied that abortion should be legalized without restriction, which, in de facto terms, denied unborn children their right to life and contradicted the principle that the right to life was the supreme right from which no derogation was permitted, as established in paragraph 2. Permitting abortion with no restrictions entailed the prioritization of the principles of privacy and freedom of choice over the right to life.

15. **Mr. Ben Achour** said that the current meeting was a celebration of the adoption of the general comment; it was not the appropriate moment to criticize the general comment based on a personal opinion. If all members were to express their views on individual paragraphs, the meeting would be interminable.

16. **The Chair** said that all Committee members were at liberty to comment on specific paragraphs if they so wished. The general comment had been adopted by consensus; he simply wished to have his personal view stated for the record, which was his right as a member of the Committee.

17. **Mr. de Frouville** said that he agreed with Mr. Ben Achour; the current meeting was not the moment to offer criticism based on an individual's personal position on given issues. He, too, had his reservations about certain paragraphs and might well have wished to air them during the present meeting. Nevertheless, the Committee members had not been invited to express their reservations; they had been invited to make general remarks, which is what they had done, even when mentioning specific paragraphs of the text. It was important for all members to observe the same rules.

18. **Mr. Koita** said that drafting the general comment had been a balancing act; it had been necessary to seek out common ground on which persons of good faith could unite. He had become convinced of the merit of the Committee's working methods when he saw how the Committee had managed to produce a text in which it connected the right to life with the preservation of the environment, the abolition of weapons of mass destruction, the eradication of poverty and the right to live in decent conditions. He had learned a great deal from the process and was grateful to the rapporteur for his excellent work.

19. **Ms. Cleveland** said that she agreed with the comments of the members who had spoken before her, with the exception of those of Mr. Fathalla, who, she believed, had egregiously abused the spirit of the meeting and his role as its Chair. The general comment was an ambitious one, and drafting it had advanced the Committee's understanding of a wide swathe of issues relating to the right to life. The end product of the collaborative process involved in drawing up the general comment would not have been the same without the wide-ranging expertise of the Committee members and the contributions of external stakeholders and the secretariat. She felt privileged to have worked with such an august group of colleagues and thanked them for their important and lasting contribution to the cause of human rights.

20. **Mr. Muhumuza** said that he, too, would have appreciated the opportunity to express his opinion on specific aspects of the general comment but would refrain from doing so given the apparent outrage that the remarks made by the Chair in his capacity as a member had provoked. The reaction to those remarks had been unfair: giving members the freedom to express their views about the general comment surely meant allowing them to criticize or commend it, as they saw fit. For example, he would have liked to comment on inflammatory rhetoric that incited attacks on the right to life. Instead, he would take the opportunity to congratulate all those who had worked to bring about the general comment. The text represented a consensus. As befitted the nature of consensus, some members would continue to disagree on certain matters. Nevertheless, the final version of the general comment was a reflection of the spirit of democracy.

21. **Mr. Santos Pais** said that he wished to join his colleagues in commending the skilfulness of the rapporteur. One of the most important lessons he had learned from the process had to do with the importance of receiving a broad array of inputs from many different stakeholders outside the Committee. Indeed, the adoption of general comment No. 36 had been made possible by the support of a great number of interested parties. The drafting process had been difficult, but rewarding, and it had been a privilege to work on such an important document.

22. **Mr. Zimmermann** said that he felt privileged, as a new member of the Committee, to have been able to add his voice to the consensus on the general comment as the drafting process came to a close, although, admittedly, his views on some of the issues addressed in the document might have been at variance with the agreed position. It was important for the general comment to be considered in conjunction with the general framework of international law. He hoped that States parties would take due note of the Committee's work.

23. **The Chair** said that he wished to reiterate that he had not abused his position as Chair; he had made it clear that, in expressing his views on the general comment, he was speaking as a member of the Committee.

24. **Ms. Waterval** said that she, too, would like to congratulate the Committee on the adoption of the general comment and pay homage to the late Sir Nigel Rodley for his considerable contribution.

The meeting was suspended at 11.15 a.m. and resumed at 11.45 a.m.

25. *Mr. Shany took the chair.*

General discussion in preparation for general comment No. 37

26. **The Chair** said that he now wished to invite members to offer their thoughts on what the topic of the Committee's next general comment might be. It was important to bear the scope of any potential subject in mind, since it was hoped that work on the next general comment could be concluded within a two-year timespan. Before ultimately choosing article 6, on the right to life, the Committee had given serious consideration to two other possible topics for general comment No. 36: article 17, on the right to privacy, and article 21, on the right to peaceful assembly. Article 17 was quite broad in scope; however, should the Committee wish to make it the subject of the next general comment, the Committee could choose to limit its work to the application of the article in, for example, digital contexts. On the other hand, it had been suggested that a general comment on article 21 might be broadened to include the provisions of article 22 on the right to freedom of association. The Committee should nonetheless not feel bound by those previous proposals; members were encouraged to take a fresh look at the Covenant for inspiration.

27. **Mr. de Frouville** said that, of the articles of the Covenant that had yet to be addressed in a general comment, articles 21 and 22 appeared to be the most suitable candidates. They were broader in scope than the other options, and the Committee had a wealth of relevant jurisprudence to work with. Furthermore, the rights to peaceful assembly and freedom of association were particularly topical at a time when individuals were facing increasing restrictions on their civil liberties. Indeed, a series of worrisome amendments had been introduced into the laws of numerous countries over the previous four years that had made it almost impossible for people to exercise their rights.

28. There were also 12 general comments that were over 10 years old and that had never been updated, including general comment No. 16 on article 17 on the right to privacy. The Committee might wish to update that general comment in the near future, particularly in the light of recent developments concerning new technologies. However, those developments did not have an impact in all the areas covered by article 17. He therefore wondered whether that would make an appropriate subject for a general comment or whether it might be more appropriate to deal with the impact of new technologies on the right to privacy in a different way, for example in the form of a joint declaration made with another treaty body.

29. **Mr. Heyns** said that a general comment was a restatement of the Committee's jurisprudence. To his mind, although there was a need to engage with issues relating to privacy in digital contexts, the Committee did not yet have enough relevant jurisprudence to devote a general comment to that topic. The issue of rights in the civic space was another interesting subject, but it was very broad in scope and would surely entail a lengthy drafting process.

30. On the other hand, the Committee had a great deal of jurisprudence relating to the right to peaceful demonstration, and the next general comment could serve as an excellent opportunity for clarifying how the provisions of article 21 interacted with other provisions of the Covenant. Furthermore, no documents on the right to peaceful demonstration had been produced at the regional or international level that carried the weight of a general comment. The Committee's jurisprudence covered a host of issues that arose before, during and after a peaceful demonstration. A general comment on that subject would also offer the chance to further engage with the impact of new technology in that sphere, including the use of body cameras and less-lethal weapons. By taking on both articles 21 and 22, the Committee risked broadening the scope of the general comment too far. He therefore supported the selection of article 21 as the sole subject of the next general comment.

31. **Ms. Cleveland** said that she wished to urge the Committee to take up both articles 21 and 22 for the general comment. Although the Committee had less jurisprudence relating to article 22 from its Views on individual communications, it was increasingly referring to the right to freedom of association in its concluding observations. Around the world in recent years, a series of pointed attacks had been carried out on the civic space, and a number of States had adopted increasingly egregious restrictions on the work of non-governmental organizations (NGOs), civil society organizations and political parties. The Committee relied on such entities to make its work effective and to push for relevant amendments to domestic legislation. At a time when those bodies were looking for guidance as to how to deal with the new restrictions being placed on their work, the Committee could make a real difference by gathering its jurisprudence and experience on those issues together in one place. Articles 21 and 22 were compatible subjects for the same general comment because they both addressed the rights of individuals to collectively engage in expressive activity. They also contained a number of very similar provisions, particularly regarding possible limitations on those rights.

32. **Mr. Santos Pais** said that he supported the proposal to deal with articles 21 and 22 in the general comment because they contained many common elements, and issues covered by those two articles were often raised together in the Committee's dialogues with States parties. As well as being interrelated, the rights protected under those two articles also overlapped with the rights set out in several other articles of the Covenant, some of which had been the subject of general comments that had become outdated. A new general comment would therefore offer an excellent opportunity to provide updated examples of the ways in which those rights interacted with the rights dealt with in articles 21 and 22. Although it would evidently take more time to address the rights to both peaceful assembly and freedom of association in the same general comment, the Committee would ultimately save time by dealing with two articles in a single body of work.

33. Another consideration was that the issues related to the right to privacy were evolving so quickly that, should the Committee choose to take up article 17, it would run the risk of producing a general comment that would already be outdated by the time that it was published. Regional data protection commissions had already been established to deal with privacy issues in digital contexts and, in some respects, it was questionable how much impact a general comment from the Committee would have in that area. For example, it was hard to imagine that the publication of a general comment would prevent States from continuing to gather data from outside their own borders on foreign nationals.

34. **Mr. Ben Achour** said that he did not support the idea of dealing with articles 21 and 22 in the same general comment. Article 21 raised a number of major problems because, contrary to the majority of legal systems around the world, it drew no distinction between the right to peaceful assembly and the right to demonstrate. If the general comment were to deal with two articles, it would make more sense to couple article 22 with article 25. The latter set out the right of every citizen to take part in the conduct of public affairs directly, which entailed giving citizens the power to freely associate with others and to establish associations. A clear link could be drawn between that right and the participation of civil society organizations, NGOs and political parties in public affairs. Article 25 was therefore a more natural choice to be twinned with article 22 on the right to freedom of association.

35. However, his preferred option would be for a general comment dealing solely with article 25. Much of the Committee's jurisprudence from concluding observations and Views on individual communications referred to the incompatibility between domestic constitutional law and the provisions of article 25. To his mind, the fact that article 25 regularly appeared to conflict with public law made it a worthy candidate for the next general comment.

36. **Ms. Brands Kehris** said that article 17, on the right to privacy, raised highly important issues that were linked, in particular, to new technology. The Committee's jurisprudence on those issues was likely to develop in the near future, but it was currently unsuitable as a subject for a general comment. She was broadly in favour of focusing on article 21. The Committee had already considered at least 70 communications concerning alleged violations of that article, and the fact that the Internet and other social media were shining a light on evolving aspects of the freedom of assembly was an important consideration. A general comment on article 21 would certainly raise issues connected with

articles 19, 22, 25 and 26. She had some doubts, however, about the desirability of developing a combined general comment on articles 21 and 22.

37. **Ms. Pazartzis** said that her preference was for a general comment on article 21, given the scale of the Committee's jurisprudence on the subject and the importance of the issue of the restriction of civil liberties in public spaces. She was not opposed to a general comment on both articles 21 and 22, but if the Committee hoped to speed up its adoption procedure, it would be wiser to focus on a single article and to simply cross-reference certain aspects of other articles.

38. **Ms. Kran** said that there was a vital need to address both the right to freedom of assembly and association under articles 21 and 22 and the right to privacy under article 17. Civil society played a crucial role in advancing and protecting human rights. The right to privacy was subject to large-scale violations in the context of rapid advances in surveillance and other technologies. As it was difficult to decide which issue was more pressing, other factors should be taken into account, such as the coverage of previous general comments.

39. Pressure on civil society had been ramped up, and repressive and violent methods had been used to silence critical voices around the world. The right of peaceful assembly and the right to freedom of association served as a key vehicle for civic activity conducive to democratic governance and sustainable development. Many United Nations bodies, including the Human Rights Council, had sounded the alarm about a significant deterioration in the observance of those rights in all regions and had encouraged the treaty bodies to address the problem pursuant to their mandates. Inputs could be obtained from the Special Rapporteur on the rights to freedom of peaceful assembly and of association and from the Special Rapporteur on the right to privacy, and the United Nations High Commissioner for Human Rights had issued a report that presented practical recommendations for the creation and maintenance of a safe and enabling environment for civil society (A/HRC/32/20). The wealth of legal reference material available to the Committee provided a convincing argument for a general comment on article 21, article 22 or both. Economies of scale could be achieved by addressing both articles, since their subject matters were closely linked. Another key factor was the existence of internal expertise on the subject.

40. **Mr. Zimmermann** said he agreed that it was preferable to focus on articles 21 and 22 rather than on article 17. The right to privacy was crucial in the digital era but required a deep understanding of technical matters and technological issues, such as those posed by attribution metadata, for example. As the wording of the second sentence of article 21 concerning restrictions on the right of peaceful assembly and the wording of the first sentence of article 22 (2) concerning the right to freedom of association were identical, the interpretation of such restrictions should serve as guidance for the implementation of both articles.

41. **Mr. Politi** said that he was inclined to support a general comment on both articles 21 and 22 on substantive grounds rather than on the basis of other considerations, such as the lack of any previous general comment or the existence of a sufficient body of jurisprudence, which were valid but not compelling reasons, in his opinion. With a view to the future, however, he would like to point out that, while it was true that there was relatively little jurisprudence regarding article 17 and that rapid technological development posed a challenge in terms of the timeliness of a general comment, the article addressed many other issues which had been covered in a number of communications. Furthermore, technology would continue to advance at an exponential pace and that should not prevent the Committee from issuing a general comment on any given article.

42. **The Chair**, speaking as a member of the Committee, said that he wished to associate himself with that position. It was important to develop expertise and generate jurisprudence on article 17. Although technology was developing at top speed, the Committee must seek to adopt relevant positions on matters that would pose challenges for present and future generations. Nonetheless, since the Committee hoped to frame the next general comment within a two-year timespan, it would be inadvisable to grapple with such an extremely difficult area of international human rights law, despite the increasing amount of jurisprudence that was being developed on issues such as surveillance. For similar reasons, he would prefer to focus on article 21 rather than combining it with article 22.

43. **Mr. Fathalla** said that, in his view, it was important to address both article 21 and article 22; such a general comment would complement general comment No. 34 on article 19 concerning the freedoms of opinion and expression.

44. **Ms. Abdo Rocholl** said that she would prefer to focus on article 17, since so many Governments were currently breaching people's privacy by obtaining their personal data, especially in the case of vulnerable groups. She would nonetheless support the decision to produce a general comment on article 21.

45. **Ms. Waterval** said that she would opt for a general comment on both article 21 and article 22.

46. **The Chair** said that there appeared to be a strong preference for a general comment either on article 21 or on articles 21 and 22, but there did not seem to be a clear majority in favour of either option. He would like to know whether the Committee was willing to proceed to a vote.

47. **Mr. de Frouville** said that a vote was unnecessary. He proposed that the Committee should first ascertain which members were candidates for the office of rapporteur and then undertake a preliminary study on the appropriateness of a separate comment on article 21 or a combined general comment on articles 21 and 22. The final decision could be taken at the next session, if necessary on the basis of a vote.

48. **The Chair** said that it would be preferable to take a decision at the current session in order to ensure that the general comment could be adopted within the next two years. The decision to produce a general comment on article 6 had been based on a vote.

49. **Mr. Heyns** said that he agreed with Mr. de Frouville that the Committee should ascertain who was willing to serve as rapporteur before taking a final decision.

50. **Mr. Fathalla** proposed that the next rapporteur for a general comment should decide whether to focus on article 21 or to combine articles 21 and 22.

51. **The Chair** suggested that the Committee should decide in principle to produce a general comment on article 21 and leave open the possibility of combining it with another article. It could then hold consultations on the appointment of a rapporteur, take into account the rapporteur's position on the articles to be addressed and then arrive at a final decision at the current session.

52. **Mr. de Frouville** said that the procedure for adopting the general comment could be expedited if Committee members familiarized themselves with the issues to be raised before the draft was submitted for discussion.

53. **The Chair** said that internal discussions and consultations with stakeholders could be held at the next session, and he agreed with Mr. de Frouville that the choice of the next rapporteur and his or her areas of expertise had an important role to play in determining the focus of the next general comment.

The meeting rose at 1 p.m.

United Nations CCPR/C/SR.3562

International Covenant on Civil and Political Rights

Distr.: General
2 November 2018

Original: English

Human Rights Committee
124th session

Summary record (partial)* of the 3562nd meeting
Held at the Palais des Nations, Geneva, on Tuesday, 30 October 2018, at 3 p.m.

Chair: Mr. Shany

Contents

Informal meeting with States parties to the Covenant and its Optional Protocols

* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 3.05 p.m.

Informal meeting with States parties to the Covenant and its Optional Protocols

1. **The Chair** said that over the course of the year the Committee had met for 15 weeks, both in plenary and in pre-sessional working groups, and had reviewed an average of 6 States parties and 30 individual communications per session. During the current session it had, inter alia, endorsed a statement on human rights defenders formulated by representatives of all treaty bodies, and it was due to adopt new rules of procedure later that week. In 2019, pursuant to General Assembly resolution 68/268, it planned to increase its total meeting time by an additional three weeks.

2. Recommendations made by the Committee had led to tangible progress in a number of States parties. Despite the many difficulties human rights faced across the world, the Committee's constructive engagement and its ability to offer a professional, non-political setting for protecting and promoting human rights constituted an effective avenue for change.

3. In 2016, the Committee had adopted a simplified reporting procedure based on States parties' replies to lists of issues prior to reporting, and it currently offered that procedure to all States parties who had already submitted an initial report. To date, 55 States had availed themselves of the new procedure which, the Committee believed, considerably alleviated reporting burdens without adversely affecting the quality of the dialogue. He encouraged all States that had not yet opted for the procedure to do so.

4. In addition, the Committee had acted to increase its effectiveness and improve the alignment of its practices with those of other treaty bodies. Measures taken included the development of a procedure to deal with repetitive communications, guidelines for decisions on remedies, and modalities for working in chambers. In addition, the Committee had reviewed the possibility of using videoconferencing facilities, reduced follow-up reporting to one round, except in exceptional cases, and moved to limit paperwork related to the review of individual communications. With the Committee on Economic, Social and Cultural Rights, it planned to embark on a pilot project for developing coordinated lists of issues, conducting back-to-back reviews of States and aligning concluding observations.

5. With a view to addressing the problem of non-reporting and late reporting, the Committee had, for each session, developed a policy of preparing at least one list of issues in the absence of a report and conducting a review of at least one non-reporting or late reporting State. In most cases, the practice had resulted in States parties replying to the list of issues and participating in the dialogue, while on two occasions the Committee had decided to consider the written replies of the State as a substitute for the report. Pursuant to General Assembly resolution 68/268, developing States could seek technical assistance from the Office of the United Nations High Commissioner for Human Rights (OHCHR) on drafting reports.

6. The main constraint faced by the Committee was the lack of resources. In particular, without a significant increase in support, its ability to tackle the growing backlog of individual communications would continue to be seriously compromised. He urged all States parties to help in that regard by finding a realistic funding formula for the next biennial budget and advocating for a more sustainable treaty body system during the review of that system scheduled to take place in 2020. In the short term, he hoped that States would consider providing earmarked support to the Petitions Unit in the form of junior professional officers or general temporary assistants.

7. One major achievement of the current session had been the adoption of the new general comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life (CCPR/C/GC/36). In the course of the drafting process, the Committee had been careful to give serious consideration to all written observations submitted by States parties. The new general comment, which represented an important contribution to international law, enshrined the right to life with dignity and underscored the obligation of States to protect that right, including from general conditions in society such as domestic violence, environmental degradation and extreme poverty. It also

reaffirmed the duty to investigate allegations of arbitrary deprivation of life and called on countries that had not abolished the death penalty to move towards abolition.

8. **Mr. Heyns**, accompanying his remarks with a digital slide presentation, said that the Committee, like other treaty bodies, was engaged in constant efforts to ensure that its processes were as efficient as possible. As part of those efforts, it had recently undertaken a review of the simplified reporting procedure, which had been introduced as a pilot project in 2010. Under the standard procedure, three primary documents were exchanged before the dialogue could take place: the report of the State party, the list of issues produced by the Committee and the replies to the list of issues by the State party. Under the simplified procedure, the number of documents had been reduced to two: the list of issues prior to reporting, which was produced by the Committee and already had a focus on the forthcoming dialogue, and the replies to the list of issues by the State party.

9. The review of the simplified procedure had involved desk research, enquiries to other treaty bodies, interviews with officials involved in the reporting process and questionnaires to States, human rights institutions and non-governmental organizations (NGOs). What had emerged was that the use of the simplified procedure varied considerably, particularly as some treaty bodies had introduced it only recently. As far as the Committee was concerned, it had received its first replies to lists of issues prior to reporting in 2013 and, since then, had seen a steady increase in the number of reports submitted under the simplified procedure.

10. The review had shown that the simplified procedure was a major improvement. It decreased overall workload because the documents produced were fewer, more concise and better focused. At the same time, it improved the quality of the reporting process because the information that went on to become the subject of the interactive dialogue was of greater relevance. The recommendations emerging from the review were that the simplified reporting procedure should be offered as a permanent option to all States parties and that a campaign should be launched to encourage States to use it. In addition, the Committee should seek to align its practices concerning the procedure with those of other treaty bodies, and the secretariat should be encouraged to table reports submitted under the procedure as soon as possible after receipt.

11. **Mr. de Frouville** said that he and Ms. Cleveland had been designated by the Bureau to talk about the lead-up to 2020 when, as stipulated in General Assembly resolution 68/268, it would be necessary to examine "the effectiveness of the measures taken in order to ensure their sustainability, and, if appropriate, to decide on further action to strengthen and enhance the effective functioning of the human rights treaty body system".

12. A number of the provisions contained in resolution 68/268 had brought real improvements to the system. They included the elaboration of an aligned methodology among different treaty bodies, as well as the increased attention paid to reprisals against individuals and groups who contributed to the work of the treaty bodies and the adoption of the Guidelines against Intimidation or Reprisals (the San José Guidelines). Other provisions had had a more questionable impact, notably the mandated increase in meeting time, which could not be fully exploited owing to a lack of personnel within the OHCHR secretariat, and the word limit placed on documents produced by treaty bodies, which had been applied inflexibly and had, at times, complicated the work of the Committee.

13. The question of languages was also making the Committee's task more problematic. Although resolution 68/268 envisaged three official working languages, translations were frequently delayed, meaning that members were obliged to work in a single language, usually English. Similarly, the General Assembly's decision that summary records should be issued in just one working language had had the effect that the records now appeared only in English. United Nations Web TV did not go far in rectifying that shortcoming because the videos it offered were, once again, predominantly in English. Lastly, he wished to point out that many members of the Committee had expressed concerns about the OHCHR website, particularly with regard to the section detailing the work of the different treaty bodies.

14. **Ms. Cleveland** said that the present system of 10 autonomous human rights treaty bodies was beset by multiple challenges such as overlapping mandates, divergent working

methods and lack of coordination, and it could not be sustained in its current configuration over the long term. A report on optimizing the treaty body system, produced by the Academic Platform on the 2020 Treaty Body Review of the Geneva Academy of International Humanitarian Law and Human Rights, included a proposal for an eight-year reporting cycle in which the reports of a single State under the instruments to which it was a party would be clustered in two groups at four-year intervals.

15. Under the proposal, with which the Committee was largely in agreement, each four-year cluster would involve a single coordinated list of issues drafted by the treaty bodies concerned and based on the model of the simplified reporting procedure. The State party would produce a single report in reply to that list of issues and then appear before each of the treaty bodies in separate back-to-back reviews, coordinated in such a way as to eliminate inappropriate overlap. Concluding observations and, subsequently, follow-up could also be coordinated.

16. The proposal had significant potential advantages. It would streamline the obligations of States parties, make their reporting requirements more predictable and reduce their travel requirements. In addition, it would reduce overlaps in reports and recommendations while preserving the specificity of the particular treaties and treaty bodies, and it would help to encourage greater participation by States, including those that currently reported late or not at all. In order for the system to work, States would be expected to fulfil their reporting obligations on time, as was currently the practice under the universal periodic review. The Committee did not agree, however, with one aspect of the proposal, which was to reduce the time allocated for the interactive dialogue from six hours to three. It would not be possible to examine the entire range of civil and political rights in such a short time, particularly with States that were not party to other human rights treaties.

17. As a way of testing the proposal, the Committee was currently exploring the possibility of a joint back-to-back review with the Committee on Economic, Social and Cultural Rights, and it would begin developing a joint list of issues in its next session. The proposal had great potential for maintaining the effectiveness and sustainability of the treaty body system, and she hoped that States would give it serious consideration in the period leading up to the 2020 review.

18. **Mr. Fathalla** said that there was an increasing backlog of individual communications as, despite improved productivity, the number of incoming cases was growing faster than the Committee's ability to deal with them. Furthermore, the extra meeting time allocated had not been matched with additional human resources. The Chair had raised that issue during his recent appearance before the Third Committee of the General Assembly.

19. In the Committee's 13 sessions since the adoption of General Assembly resolution 68/268, it had reached a final decision on 475 individual communications, an average of 36 per session. Nonetheless, 635 communications were still pending. If adequate resources were made available, the secretariat could prepare 268 of them for consideration, and the Committee was ready to meet in dual chambers in order to expedite the process. However, the success of such a move also depended on the availability of human resources within the secretariat.

20. On a positive note, he was pleased to say that the Committee had no backlog of State party reports. Using its available resources, it had managed to consider reports from 88 States parties since the adoption of resolution 68/268 and it was ready to consider a further 18 in 2019. However, the support of States remained crucial because, without a significant increase in the capacity of the secretariat, the Committee's ability to address the backlog of individual communications, and the overall implementation of the Covenant, would continue to be compromised.

21. **Mr. Salama** (Office of the United Nations High Commissioner for Human Rights) said that, in one recent case, the European Court of Human Rights (ECHR) had made use of the Committee's general comments to fill gaps in legal understanding; however, it was a miracle that the Committee was still able to produce such high-quality work. The dilemma it faced was that the General Assembly had decided to grant additional meeting time but

not the corresponding human resources. Thus, OHCHR was unable to provide the material that the Committee needed in order to make best use of the time available to it.

22. General Assembly resolution 68/268, which remained a landmark of clarity, contained parameters with which to assess the workload of treaty bodies and had gone a long way to improving the speed and efficiency of the system. It also included provision for a tool of accountability in the form of a biennial rep. t by the Secretary-General on the status of the treaty body system. The first such report (A/71/118) had been submitted in 2016 and, on the basis of the fluctuating workload calculated using the aforesaid parameters, four treaty bodies, including the Committee, had been allocated more meeting time in 2018–2019, and five had been allocated less.

23. Since the adoption of resolution 68/268, the number of individual communications received had risen but the number of reports from States parties had not. Therefore, the time allocated for reports had been reduced while that allocated for communications had increased across the system; in the case of the Committee, from 4.2 to 10.9 weeks. It was important to bear in mind, however, that processing communications required three or four times more staff than processing reports. The proposals put forward by the Committee were feasible within existing resources if the same logic of rebalancing different tasks, as set forth in resolution 68/268, was applied in the 2020 review.

24. **The Chair** said that 11 additional OHCHR staff positions had been requested but the Advisory Committee on Administrative and Budgetary Questions (ACABQ) and the General Assembly had decided to allocate only 5 of them. Thus, the predicament the Committee was facing was that it had extra meeting time but only around 40 per cent of the staff it required to support it.

25. **Mr. Vorobiev** (Russian Federation) said that, in order to facilitate the preparation of his country's periodic report, which was due to be submitted to the Committee in 2019, he wished to ask the secretariat to draft an official Russian translation of the Guidelines for the treaty-specific document to be submitted by States parties under article 40 of the International Covenant on Civil and Political Rights (CCPR/C/2009/1).

26. **Mr. Lobo** (Norway) said that Norway supported the simplified reporting procedure. The list of issues prior to reporting made the review more focused and efficient, particularly if the dialogue took place soon after the submission of the report. He hoped the Committee could share its practices with other treaty bodies in order to harmonize working methods across the system. He wondered whether any thought had been given to other ways of dealing with the backlog of individual communications, even without an increase in human resources. For example, had the Committee considered implementing a policy of prioritization, such as that practised by ECHR?

27. **Mr. Khan** (Pakistan) said that the Geneva Academy report had contemplated two options: a single consolidated review and clustered reviews every four years. Was he right in thinking that the latter was the preferred option of the Committee? He wished to know if the Committee had consulted with the Geneva Academy to express its concerns about the proposed reduction of meeting time from six hours to three. Pakistan supported the right to life but had some serious reservations regarding parts of the Committee's new general comment No. 36.

28. **Ms. Anderson** (Canada) said that her country also preferred the simplified reporting procedure; it would be helpful to have a copy of the digital slide presentation on that procedure. She would appreciate further details about the concerns raised by Mr. de Frouville regarding the OHCHR website. She also wished to know more about the possibility of joint reporting with the Committee on Economic, Social and Cultural Rights, mentioned by Ms. Cleveland, and what role States would have in any decisions that needed to be made, also in the light of the forthcoming 2020 review. Canada had already shared its views on general comment No. 36 and those views remained unchanged.

29. **Ms. Steenbrugghe** (Belgium) said that the challenges faced by the treaty body system had been well expressed in the report of the Secretary-General on the status of the human rights treaty body system. Belgium agreed that the simplified reporting procedure needed to be rolled out across the system as a permanent option. However, its application

needed to be streamlined as, currently, some treaty bodies placed conditions and limitations on the use of the procedure while others did not. The reporting obligations of each State under each treaty should be evenly spread across the reporting calendar. In that regard, the Geneva Academy report on the 2020 review was a good basis for further discussion, with a view to achieving the shared objective of helping States parties better fulfil their obligations while maintaining the integrity and independence of the treaty body system.

30. **Mr. Heinzer** (Switzerland) said that he wished to commend the good practices of the Committee, which served as a blueprint for other treaty bodies. The arguments that had been put forward in favour of the simplified reporting procedure appeared extremely convincing. Switzerland would continue to engage in discussions on the treaty body strengthening system, also in the light of the Geneva Academy report. The proposal to submit reports on an eight-year cycle, although it raised no issues under the Covenant, might be problematic under other treaties that specified the required periodicity of reports.

31. **Ms. Mohamed** (Egypt) said that it was important to provide the Committee with the human and financial resources it needed to fulfil its mandate. General Assembly resolution 68/268 had encouraged the use of the simplified reporting procedure but had left the final decision on whether to do so up to the States themselves. Her country was looking forward to the outcome of the 2020 review, the aim of which was to enhance the efficiency of the treaty body system and to alleviate the workload of States parties. In that regard, Egypt was continuing to reflect on the proposals contained in the Geneva Academy report. General comments, which provided useful guidance for the implementation of the Covenant, should reflect the views of States parties more inclusively. To that end, apart from providing written input on the formulation of new comments, States should also be able to participate in the Committee's oral deliberations.

32. **Mr. Schneider** (Germany) said that his country also looked positively on the simplified reporting procedure. However, it was important to coordinate and harmonize it across all treaty bodies. Germany supported the work done by the Geneva Academy in that regard. In addition, the simplified procedure needed to be explained, not just to States parties but to other actors involved in the reporting process, such as civil society organizations.

33. **Mr. Taranda** (Belarus) said that the meeting with States parties was a good opportunity for the Committee to make its work more accessible to States parties. He would like to know what steps were being taken by the Committee to raise public awareness of the individual communications procedure in States parties, including those that were members of the European Union.

34. **Mr. Okaniwa** (Japan) said that his country appreciated the Committee's efforts to adopt more efficient working methods, such as the simplified reporting procedure, and it supported the idea of clustering the reviews of States parties. He wondered whether the treaty body system would be looked at in relation to the work of other human rights mechanisms, such as the Human Rights Council, in order to avoid duplication of work and ensure more effective results. Lastly, given that there was a limit on the amount of financial and human resources that could be made available to the Committee, he would like to know how the Committee planned to improve its working methods in order to reduce the large and increasing backlog of individual communications.

35. **Ms. Pereira Farina** (Paraguay) said that, in the treaty body strengthening process, it was important to distinguish between structural and non-structural changes and to proceed with caution so as to avoid taking the wrong path. Further dialogue on treaty body strengthening was needed. Paraguay welcomed the introduction of the simplified reporting procedure, which had not jeopardized the quality of the dialogues between States parties and the Committee. Lastly, she wished to know whether the documents produced by the Committee would continue to be translated into Spanish; translation was essential in order to ensure that such documents remained accessible.

36. **Mr. Pfeifer** (Austria), thanking the Committee members for their statements on the 2020 review, said that it would be helpful if the Committee could make those statements publicly available. He wondered whether the Committee had exchanged views with other treaty bodies on the proposals made by the Geneva Academy of International Humanitarian

Law and Human Rights, and whether the treaty bodies planned to establish a common position on the subject.

37. **The Chair** said that the Committee shared the concerns raised by the representative of Paraguay with respect to translation and would do its best to accommodate specific requests from States parties in that regard. Despite the resource constraints that it faced, it was endeavouring to deal with individual communications as quickly as possible. Priority was given to cases of ongoing imprisonment and cases in which interim measures had been requested. The comparison with ECHR was somewhat far-fetched because the Committee had fewer than 5 per cent of the human resources available to ECHR. Japan had made a very helpful contribution by designating a junior professional officer to help the Committee with its work. Since the Committee received hundreds rather than thousands of complaints each year, it needed only a few extra staff members in order to be able to cope with the workload.

38. The Committee believed that an eight-year review cycle was feasible, provided that each State was subject to a comprehensive review, either by a treaty body or in the framework of the universal periodic review, every two years. For that reason, it believed that the clustered review proposal was the best option among those put forward by the Geneva Academy. The Committee was against the idea of shortening the interactive dialogue to three hours because it was committed to ensuring that States parties had enough time to explain their policies in full.

39. All treaty bodies had been asked to complete a questionnaire on the 2020 review, with a view to formulating a common position. The Committee had ascertained that its position on the subject was, on the whole, compatible with that of the Committee on Economic, Social and Cultural Rights. However, it was aware that its views were not shared by all treaty bodies.

40. Under the coordinated reporting procedure, States parties would receive two lists of issues at the same time from two different treaty bodies and they would choose whether to prepare a single report or two separate reports. The rapporteurs responsible for drafting the lists of issues would work together to avoid repetition and the two dialogues would be scheduled consecutively. The Committee believed that the States parties would benefit from such an approach and wished to run a pilot project, with their consent and collaboration.

41. The Committee encouraged all States parties that appeared before it to raise public awareness of the Covenant and the Optional Protocols thereto. Unfortunately, the Committee's ability to effectively disseminate information about its activities via its website and social media was limited by its overall budgetary situation and by the fact that its website was not very user-friendly.

42. **Mr. Heyns** said that the report on the simplified reporting procedure had been edited and translated and would be made available online within a few days. The Committee was keen to align its simplified reporting practices with those of other treaty bodies; the subject would be discussed at a meeting of treaty body representatives in December 2018. In order to speed up its examination of individual communications, the Committee had adopted a repetitive cases procedure whereby communications that dealt with similar legal or factual issues were examined collectively.

43. **Mr. Fathalla** said that the Committee was also planning to start examining communications in dual chambers; however, in order to do so, it required additional resources. It was important to note that the General Assembly did not allocate resources to the Committee specifically, but to the human rights system as a whole, including the 10 treaty bodies. The allocation of resources within that system was a complex issue that needed to be addressed by States parties through their representatives in Geneva and New York.

44. **Mr. de Frouville** said that the French version of the Committee's website was not updated regularly. That problem was linked to the fact that there was no centralized administration of the OHCHR website: the various sections and language versions of the website were managed separately.

45. Although the Committee had worked hard to streamline its practices, the shortage of resources remained an insurmountable obstacle; for example, it was willing to consider communications in dual chambers but the secretariat did not have the capacity to prepare enough communications for consideration. Between 2013 and 2017, the resources allocated to the Human Rights Treaties Branch of OHCHR had remained stable, whereas the number of communications submitted to the Committee had risen by more than 80 per cent.

46. The Committee was aware of the need to collaborate with other treaty bodies in order to align working practices and adopt a common position on the reforms that needed to be undertaken. To that end, it held joint meetings with other treaty bodies whenever possible.

47. **The Chair** said that the Committee did not consider its work to be organically linked to that of the Human Rights Council, since the Council was a political body whereas the Committee was a group of independent experts. However, it did follow the Council's work and take note of States' responses to the Council's recommendations. The universal periodic review calendar was a good model for the Committee to follow, for it allowed States to meet their reporting obligations more easily. The Committee was looking forward to adopting a more structured reporting calendar in 2020 that would allow both the Committee and the States parties to plan their work more easily. He wished to thank the State party representatives for engaging in a constructive exchange of views.

The discussion covered in the summary record ended at 4.45 p.m.